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THE HONORABLE STEPHANIE A. AREND

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

WASHINGTON STATE REPUBLICAN
PARTY, et al.,

Plaintiffs,

v.

KING COUNTY, et al.

Defendants,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE; SECRETARY
OF STATE SAM REED,

Intervenor-Defendants.

NO. 04-2-14599-1

NOTICE OF APPEAL TO THE
SUPREME COURT OF WASHINGTON

NOTICE OF APPEAL TO THE SUPREME
COURT OF WASHINGTON - 1

[15934-0006/SL043520.139]

Perkins Coie LLP
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Fax: (206) 359-9000

1 Intervenor Washington State Democratic Central Committee seeks review
2
3 by the Supreme Court of Washington of the order granting plaintiffs' motion for a
4
5 temporary restraining order, which was entered in this action by the Honorable
6
7 Stephanie A. Arend on December 17, 2004. A copy of the signed order from which
8
9 this notice of appeal is taken is attached to this notice.

10 The attorneys of record in this matter are as follows:
11

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14 Robert J. Maguire, WSBA # 29909
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44 Secretary of State Sam Reed
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Beth A. Colgan, WSBA # 30520
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Washington State Democratic Central
Committee

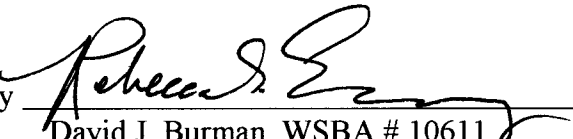
NOTICE OF APPEAL TO THE SUPREME
COURT OF WASHINGTON - 2

[15934-0006/SL043520.139]

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1 DATED: December 17, 2004.
2
3
4

5 PERKINS COIE LLP
6

7 By 
8

9 David J. Burman, WSBA # 10611

10 Kevin J. Hamilton, WSBA # 15648

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16 Attorneys for Intervenor-Defendant

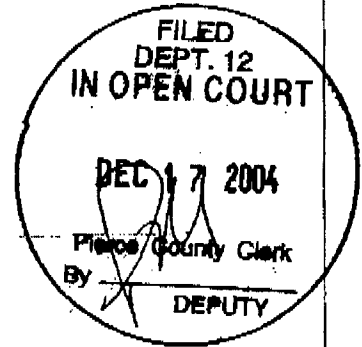
17 Washington State Democratic Central

18 Committee
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NOTICE OF APPEAL TO THE SUPREME
COURT OF WASHINGTON - 2

[15934-0006/SL043520.139]

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

WASHINGTON STATE REPUBLICAN
PARTY, an unincorporated association;
CHRISTOPHER VANCE, a citizen of
Washington State; and JANE MILHANS, a
citizen of Pierce County;

Plaintiffs,

v.

KING COUNTY DIVISION OF RECORDS,
ELECTIONS AND LICENSING SERVICES;
and KING COUNTY CANVASSING BOARD;

Defendants.

No. 04-2-14599-1

TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE

~~[PROPOSED]~~

[CLERK'S ACTION
REQUIRED]

The Court has reviewed the pleadings and declarations filed in support of Plaintiffs' motion for a temporary restraining order and Defendants' opposition to said motion. It clearly appears to the Court from the facts as shown by the declarations that unless the below Temporary Restraining Order is entered, Plaintiffs will suffer immediate harm and denial of rights that cannot be compensated in damages. There is a significant and continuing risk to Plaintiffs from the harm that may result from Defendants' failure to comply with Washington law as described in the declarations and pleadings on file. The Court is of the view that an order must be issued immediately and that any delay would unduly increase the risk of harm and loss.

TEMPORARY RESTRAINING ORDER
SEA 1587561v1 55441-3

ORIGINAL

Davis Wright Tremaine LLP
LAW OFFICES
2600 Century Square • 1301 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 • Fax: (206) 622-7699

1 Plaintiffs' counsel has certified to the Court in writing that notice to the defendant was
2 provided.

3 The Court makes the following findings of fact:

4 1. On November 17, 2004 Secretary of State Sam Reed ("Secretary of State")
5 announced the official results of the November 2, 2004 general election. Dino Rossi won
6 the Governor's race by a margin of 261 votes. Because the margin of victory was fewer
7 than 2000 votes, the Secretary of State ordered a machine recount of the votes in the race
8 for governor. RCW 29A.64.021.

9
10 2. The votes were retabulated, and Governor-Elect Rossi again prevailed. The
11 Secretary of State certified the results and confirmed on November 30, 2004 that Rossi was
12 the Governor-Elect. RCW 29A.60.250.

13 3. On December 3, 2004, the Washington State Democratic Central
14 Committee ("WSDCC") requested a state-wide manual recount. RCW 29A.04.139.

15
16 4. On December 3, 2004, the WSDCC filed a Petition in the Washington State
17 Supreme Court seeking an emergency relief and an order directing the Secretary of State to
18 promulgate "uniform standards" for the manual recount. The WSDCC sought an order
19 from the Supreme Court requiring that the canvassing boards of all 39 counties in the State
20 of Washington recanvass all ballots previously canvassed and rejected.

21 5. On December 14, 2004, the Supreme Court denied the relief holding that
22 the word "recount" means the process of retabulating ballots and producing amended
23 election returns under RCW 29A.04.139. No. 76321-6. The Supreme Court further held
24 that under Washington law, ballots are to be "retabulated" **only if they have been**
25 **previously counted or tallied.** The Supreme Court rejected the position of the WSDCC
26
27

1 that recanvassing of rejected ballots was required under any applicable Washington state
2 statute.

3 6. On or about December 13, 2004, King County Elections Division disclosed
4 that there were at least an additional 520 ballots which had previously been canvassed and
5 rejected and which should now be counted.

6 7. On December 15, 2004, at the Canvassing Board meeting, Dean Logan,
7 Director of King County Elections Division, stated that instead of 520 ballots, there were
8 573 absentee ballots that had previously been canvassed and rejected prior to November
9 17, 2004 because King County could not match the signatures on the absentee ballots with
10 any digital voter registration signatures.

11 8. ~~Logan and Bill Huennelkins, King County Elections Supervisor, both stated~~
12 ~~that the King County Elections Division has already checked the signatures on the absentee~~
13 ~~ballots twice against the database of digital signatures - first by an election worker and~~
14 ~~then by a supervisor.~~

15 9. ~~Prior to the November 17, 2004 certification, King County Elections~~
16 ~~Division had also sent a letter to more than 1000 absentee voters giving them an~~
17 ~~opportunity to update their registration signatures. The 573 voters who submitted the~~
18 ~~rejected ballots at issue did not respond to that letter and as a result, their signatures were~~
19 ~~never updated in the digital signature files for King County Elections Division.~~

20 10. ~~The 573 absentee ballots have not been kept secured since they were~~
21 ~~rejected in November 2004. While counted ballots were placed in sealed containers and~~
22 ~~kept in a fenced, locked area as required by statute, rejected ballots were not placed in~~
23 ~~sealed containers but were kept in open trays. On at least one occasion, the rejected ballots~~
24 ~~were removed from the fenced, locked area and kept overnight in an open area in open~~
25 ~~trays.~~

* Based on the foregoing, and the materials filed in support of and in opposition to the motion, the Court concludes that RCW 29A.60.210 does not apply in this context.

11. ~~On or about December 13, 2004 the ballots were transferred from the Mail Ballot Operations Satellite office ("MBOS") for the King County Elections Division to the King County Administration Building. The trays of ballots were not accompanied by any observers or a Deputy Sheriff from the King County Sheriff's Office as was the normal procedure.~~

12. Although the Washington State Supreme Court on December 14, 2004 had stated that no recanvassing should occur in the hand recount, the three member King County Canvassing Board on December 15, 2004 voted (2 to 1) to recanvass the previously rejected 573 absentee ballots.

*
For these reasons,

IT IS HEREBY ORDERED that a temporary restraining order is issued against the King County Elections Division and the King County Canvassing Board to segregate the 573 previously rejected absentee ballots;

~~ORDERED that Defendants must now retain these previously rejected ballots subject to the same exact security as counted ballots; and~~

ORDERED that Defendants must retain the absentee envelope with each absentee ballot; and

ORDERED that Defendants are restrained from canvassing the 573 previously rejected and canvassed ballots ~~until the validity of ballots can be determined.~~

This order is immediately binding upon the parties to this action, their agents, servants, employees and attorneys, and upon those in active participation with them who receive notice of the order by personal service or otherwise.

~~Bond shall be posted in the amount of [\$] as security for the payment of such costs and damages defendant may incur or suffer if he is found to have been wrongfully enjoined or restrained by the issuance of this order.~~

IT IS FURTHER ORDERED that this order shall remain in full force and effect for

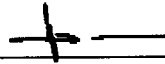
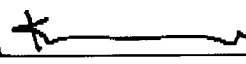
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4 fourteen (14) days after entry, unless within that time, for good cause shown, it is extended
5 or unless it is superseded by a preliminary or permanent injunction.

6
7 Issued at 4 p.m., this 17th day of December, 2004, at ~~Seattle~~ ^{Tacoma}, Washington.

8
9 
Judge/Commissioner

10 Presented by:

11 DAVIS WRIGHT TREMAINE
12 Attorneys for Washington Republican Party

13 By  
14 Harry Korrell, WSBA No. 23173
15 Robert J. Maguire, WSBA No. 29909

16
17 By _____
18 Diane E. Tebelius, WSBA No. 19727
19 Attorney at Law

